of other equitable circumstances, for the very ground of equity jurisdiction has been removed by giving the assignee the legal title.[28] If this be true the federal courts of equity undoubtedly have been deprived of their former jurisdiction by a state statute changing the substantive law. On the other hand, where the assignee is merely given the right to sue in a court of law in his own name it is believed that the federal courts are not thereby deprived of their equity jurisdiction because the assignee still has only the equitable title, even though the statute be expressly exclusive or construed by the state courts to be so. The modern married women's statutes removing the wife's common-law disabilities, furnish a similar, familiar example of statutes depriving the equity courts of their former jurisdiction by providing a complete and adequate remedy at law.

It is unconditionally conceded that a state statute can not expressly and directly change the modes and forms of procedure of the federal courts of equity. Neither can such a statute with the express purpose enlarge nor restrict the jurisdiction of these courts. Yet it can not be doubted that the materials upon which the federal jurisdiction operates are proper subjects of state legislation, and that changes in the substantive structure of rights may have important effect upon the method of judicial enforcement or administration. And in cases not inherently of exclusive equitable cognizance, but where the right to resort thereto rests upon an inadequacy of the remedy at law it would seem that a legislative act of the state making the remedy adequate would under some circumstances result in a loss of jurisdiction in equity. So the doctrine that a state can neither define nor regulate the equity jurisdiction of the courts of the United States should not be taken too broadly.[29] The validity of state statutes then, to oust or enlarge the equitable jurisdiction of the federal courts seems to depend more upon their purpose and the nature of the subject which they affect than upon the ultimate effects which they produce.

WORKMEN'S COMPENSATION ACTS—ACCIDENTS "ARISING OUT OF AND IN THE COURSE OF THE EMPLOYMENT."—From a consideration of the very nature of Workmen's Compensation Acts and the reasons for adopting them, and from all principles of right and justice, it is clear that the employer cannot be compelled to compensate a workman for the loss of his earning capacity or the dependents for the loss of the dead employee's support unless the loss was caused by and due to the employment. Therefore the clause in the act which defines the injuries for which compensation must be given is of the utmost importance. And while such injuries are variously defined in some of the states which have adopted Workmen's Compensation Acts, the almost universal phrase

[28] See Cummings *v.* Norris, 25 N. Y. 625; Cottle *v.* Cole & Cole, 20 Iowa 481.

[29] See Union Pacific Ry. Co. *v.* Board of Commissioners, *supra.*

is the one borrowed by the majority of the American acts from the English Workmen's Compensation Acts. This limits the injuries for which compensation can be recovered to those by accident "arising out of and in the course of the employment." [1]

Inasmuch as the English statute uses these words, the English decisions are entitled to weight, and since this branch of jurisprudence has only recently been developed to any extent in this country the English decisions will frequently be referred to in deducing the rules which govern the construction of these words.[2]

The fundamental principle to be borne in mind in construing this phrase is that, to justify an award, the accident must have "arisen out of" as well as "in the course of the employment." The two are separate questions to be determined by different tests; where both requirements are not satisfied an award under the statute is not proper.[3] "In the course of" points to the time, place, and circumstances under which the accident occurs, while the words "out of" confine the accidents to those where the employment was the origin or cause.[4] But these acts should be interpreted broadly.[5]

Of the two tests which must in every case be satisfied, the broadest is that which refers to "in the course of" the employment, and that requirement is much easier satisfied and gives less difficulty than the one requiring the accident to "arise out of" the employment. An accident is said to take place in "the course of" the employment when the injured employee is doing what a man so employed may reasonably do, within the time he is employed, and at a place where he may reasonably be during the time.[6] However, "in the course of" does not mean simply that time during which the employee is actually engaged in doing the work the employer hires him to perform.[7] But it seems that there are two very important restrictions, namely, what the employee is doing must be something that is necessarily incident to the work he is

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[1] Act, 1897, 60 & 61 Vict. c. 37, s. 1, sub-s. 1.

[2] Ryalls *v.* Mechanics Mills, 150 Mass. 190, 22 N. E. 766, 5 L. R. A. 667; In re Employers' Liability Assurance Corp., 215 Mass. 497, 102 N. E. 697.

[3] Hopkins *v.* Michigan Sugar Co. (Mich.), 150 N. W. 325; Milliken *v.* A. Towle & Co., 216 Mass. 293, 103 N. E. 898.

[4] Rayner *v.* Sligh Furniture Co., 180 Mich. 168, 146 N. W. 665. See 25 Harv. Law Rev. 401, for excellent discussion of the English authority on this subject.

[5] In re Hurle, 217 Mass. 223, 104 N. E. 336. See Coakley *v.* Coakley, 216 Mass. 71, 73, 102 N. E. 930, 932, where it is said by Rugg, C. J., "The Act should be interpreted broadly in harmony with its main aim of providing support for those dependent upon a deceased employee.

[6] Bryant *v.* Fissell, 84 N. J. 72, 86 Atl. 458.

[7] Zabriskie *v.* Erie R. R. Co., 85 N. J. L. 157, 88 Atl. 824, affirmed, 92 Atl. 385; In re Donovan, 217 Mass. 76, 104 N. E. 431; Riley *v.* Howard & Sons Ltd. (1911) 1 K. B. 1029. The injured party was employed at respondent's mill, but was discharged on Wednesday. While returning for her pay on Friday, she slipped on the stairs and was injured. The court held that the accident arose out of and in the course of the employment.

hired to perform, and he must not unnecessarily increase the danger beyond that contemplated by the contract of employment.[8]

As we have already seen, the injuries arising "out of" the employment are those in which the employment is the origin or cause.[9] In other words there must be a causal connection between the employment and the injury.[10]

The test laid down by the English cases and which seems to have been followed in this country, as to whether or not an injury is one arising "out of" the employment, is: Did the injury result from a risk which it could reasonably be seen, at the time the injured employee entered into the employment, the employment subjected him to, or in other words was the risk incidental to the employment? If it was such a risk the accident arose out of the employment, but if it was not the accident was one for which no compensation could be recovered.[11]

These tests are properly applied in the recent case of *Western Indemnity Co.* v. *Pillsbury* (Cal.), 151 Pac. 398. Here a foreman of a gang of laborers, after reprimanding a certain Greek laborer for his method of work and showing him the correct method without avail, ordered him to put down his shovel and quit work. The Greek refused and the foreman in endeavoring to take the shovel from him was thrown down by the Greek, who inflicted severe lacerations on him with his teeth, from which blood poisoning resulted. The court held that the injury was one arising out of and in the course of his employment and upheld an award giving him compensation. It can readily be seen in accordance with the rules stated, that the character of the men which the injured employee was employed to direct was such that rough and injurious treatment at their hands was an incident of the employment.

It is even held that the tortious acts of third persons, strangers to the employment, are a risk incidental to the employment if it is shown that it is reasonably probable that the employee will be exposed to such risks.[12] This is clearly true when the tortious acts are directed against him as an employee and because of the employment.[13] In fact the courts go so far as to hold the accident

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[8] Spooner *v.* The Detroit Saturday Night Co. (Mich.), 157 N. E. 657. The deceased was employed solely to operate an engine and dynamo, which was in the basement and which he had no occasion to leave. He went upstairs on foot to visit some men, and as a friendly act started to take them farther up in an elevator and was killed. Held, the accident did not arise in the course of the employment.

[9] Rayner *v.* Sligh Furniture Co., *supra.* See 25 Harv. Law Rev. 401.

[10] Milliken *v.* A. Towle & Co., *supra.*

[11] Bryant *v.* Tissell, *supra.* Zabriskie *v.* Erie R. R. Co., *supra:* See Hulley *v.* Moosburgger (N. J.), 93 Atl. 79, where it is said by Kalisch, J.: "The principle to be extracted from the adjudicated cases in this state appears to be that, when the accident is the result of a risk reasonably incident to the employment it is an accident arising out of the employment. Armitage *v.* L. & Y. Ry. Co. (1902), 2 K. B. 178; Challis *v.* London & S. W. Ry. Co. (1905) 2 K. B. 154.

[12] Challis *v.* London & S. W. Ry. Co., *supra.*

[13] In re Employers' Liability Assurance Co., *supra;* Nisbit *v.* Rayne & Bunn (1910) 2 K. B. 689.

is within the statute even though it is caused by the playful act of a fellow workman and is in no way in furtherance of the work.[14]

Furthermore, according to the English cases the *causa proxima* of the accident must be looked into by the court, and if it is seen that the conditions of the employment were the proximate cause of the injury the employee will be entitled to compensation, although some disability of the employee made him more susceptible to injury than the average workman. This view repudiates the view that the employer is not liable for the remote consequences of the disability which the workman brings with him, and bases its conclusion on the assumption that a man always brings some disability with him. Sometimes it is old age and sometimes it is of a more serious nature, but nevertheless it does not relieve the employer of liability.[15] It is doubtful if the American courts go as far as this to hold the employer liable for injuries due to remote disabilities of the employee.[16]

And to further illustrate the reasoning of the courts in regard to the construction of this phrase, it is interesting to note, that if the place and circumstances in which the workman is employed involve a greater than ordinary risk of some particular danger, as lightning for example, such an injury may be considered as caused by an accident arising out of his employment, although it may not be connected with or have any relation to the work the employee was doing.[17] It is not purposed to go into the question of what circumstances amount to an accident, but the expression is used in the Workman's Compensation Acts in the popular and ordinary sense of the word, as denoting any unforeseen and untoward event producing personal harm.

RIGHT OF THE ASSIGNEE OF THE DISTRIBUTIVE SHARE OF AN ADMINISTRATOR TO RECOVER OF THE SURETIES ON THE ADMINISTRATIVE BOND.—It is a general rule in equity that the assignee of a chose in action is vested with all of the interest of the assignor. Likewise any defense existing at the time of the assignment against

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[14] Hulley *v.* Moosburgger, *supra*. But see English case of Armitage *v.* L. & Y. Ry. Co., *supra*.

[15] Wicks *v.* Dowell & Co. (1915) 2 K. B. 225. In this case a workman employed in unloading coal from a ship, who was required in the course of his duty to stand by the open hatchway through which the coal was being brought up from the hold, was seized with an epileptic fit while at work, and fell into the hold and was thereby seriously injured. It was held by the court that the injury arose out of and in the course of the employment.

[16] Milliken *v.* A. Towle & Co., *supra*. A teamster, by reason of his occasional loss of memory due to an accident in earlier life, left the wagon which he was employed to drive and wandered about until he fell into a swamp and contracted thereby pneumonia, from which he died. It was held by the court that this was not an injury arising out of the employment. Although it was conceded that it arose in the course of the employment. But see In re Brightman (Mass.), 107 N. E. 527.

[17] Andrew *v.* Failsworth Industrial Society (1914) 2 K. B. 32.